

**Town of Eden
Planning Board Minutes
April 5, 2017**

MEMBERS PRESENT:

Andrew Romanowski – Vice Chair
Dr. Kevin O’Gorman M.D.
Juanita Majewski
Brian Reed

MEMBERS ABSENT:

Dr. Frank Meyer D.D.S.
Tony Weiss
Bill Zittel
David Johnson
Bill Mahoney

GUESTS:

Greg Keyser – Town Engineer
Susan Wilhelm – Town Council member
Supervisor Mellisa M. Hartman

Vice -Chairman Andrew Romanowski called the April 5, 2017 Planning Board meeting to order at 7:00 p.m. Brian Reed will be an acting member tonight due to the absence of a few members. Andy asked for a motion to approve the March 2017, minutes as printed and distributed. Brian Reed made a motion, Dr. O’Gorman seconded, hearing no further comments or corrections – Vote: all “Ayes” motion carried.

NEW & UNFINISHED BUSINESS:

Supervisor Hartman presented a Certificate of Recognition Honoring; Juanita Majewski for her 39 years of volunteering on the Planning Board.

Andrew Romanowski then read a thank you letter from the Planning Board for her many years of dedicated service.

1: Eden Self Storage – update

Greg Keyser stated that the Eden Self Storage Special Use Permit Amendment was on hold. The applicant has many issues at the site and will need to comply with requirements for storm water, outdoor storage and determination of wetlands.

2: Board Member Vacancy

Due to Juanita Majewskis resignation this board will need to vote on a new member.

Item tabled – no quorum

3: Solar Legislation Discussion

The Eden Planning Board was asked to go over the Solar Legislation draft for review and comments; Brian Reed had a Solar Code Review prepared to present to the board. There was a half hour discussion back and forth with members about the code and what changes should be made to the legislation-see attached presentation.

If approved, the board would like to ask for one half hour credit for training. Members present: Brian Reed, Juanita Majewski, Andrew Romanowski, Dr. O'Gorman.

REPORTS: Reminder of upcoming training workshops.

ANNOUNCEMENTS: NONE

Andy Romanowski made the motion to adjourn the meeting at 7:50p.m. Seconded by Dr. O'Gorman. All "Ayes" motion carried.

The next meeting is tentatively scheduled for May 3, 2017 at 7:00 p.m.

Respectfully submitted
Diane Herzog

**CERTIFICATE OF RECOGNITION
HONORING JUANITA MAJEWSKI**

WHEREAS, Juanita Majewski has been a member of the Eden Planning Board since February 1978 which equals 39 years; and

WHEREAS, Juanita has been instrumental in selflessly volunteering with her colleagues to ensure our Town is on the right path for development; and

WHEREAS, over the years she has served on various committees and board other than the Planning Board: such as the Conservation Advisory Board and Off Road Drainage Committee and;

WHEREAS, the entire Town has benefited from Juanita's time and talent;

NOW, THEREFORE, WE, the Eden Town Board, on behalf of the residents of Eden, express to Juanita our sincere appreciation and thank you for the many years of dedicated service provided to our Town.

Date: April 5, 2017

EDEN PLANNING BOARD

2795 East Church Street, Eden, New York 14057 (716) 992-3408

William Mahoney, Chairman

Andrew Romanowski, Vice Chairman

Kevin O'Gorman, M.D.

Juanita Majewski

Anthony Weiss

William Zittel

Andrew Romanowski

Franklin Meyer, D.D.S.

David Johnson – Alternate

Brian Reed – Alternate

April 4, 2017

Juanita,

Since, February 1978 you have been a volunteer on the Town of Eden Planning Board, plus serving on many boards and committees including the Conservation Board, and Off Road Drainage Committee. Being on these boards had to have its challenges but you handled them professionally, with compassion and always with the towns best interest at heart and mind. This board nor the residents of the town can thank you enough for all your time and dedication over the past 39 years. From the bottom of our hearts as planning board members and more importantly as residents of the town of Eden we would like to thank you for all your service, time and commitment, your contributions have shaped our town of Eden. We will miss your presence at the board table but wish you well in your future ambitions.

Respectfully,

William Mahoney & Eden Planning Board Members

Solar Code Review
Town of Eden – Planning Board
April 5, 2017

1. Code review – Since the planning board will be integral in the approval process for utility-scale solar energy systems (>12kw), it is important the code can be easily interested and potential gray areas are cleaned up prior to implementation of the new law.
 - Review Brian’s comments
 - i. Zoning areas by type
 1. Differs from WECS – Should we synchronize for utility scale
 2. Consider additional setback requirements for schools and parks
 - a. Current code req is 200’ from adjacent lot lines
 - ii. Synchronize with other code terms
 1. Code Enforcement Officer (Solar and Telecommunication) vs. Building & Zoning Inspector (WECS)
 2. Special Permit vs. Special Use Permit – it seems these are used interchangeably throughout the code.
 - iii. Roof-mounted systems not covered
 - iv. Coordinate Solar Application Process – [172-7] with redesign of current permit application process thru Building Department
 1. Synchronize Section 172-5 (B) & 172-7
 - v. Consideration for Emergency Personnel Review? Or standards the Planning Board can consider in evaluation
 - Any additional PB Member comments
2. Example Solar Panel Images
 - Ground Mounted
 - Building Mounted
 - PSEG Solar Panels – FYI. How would we deal with this scenario
3. Member concerns about solar
 - Coordinate concerns with Comprehensive Plan Committee
 - Please be active in Comprehensive Plan Public Forums

Chapter 172. Solar Energy Systems

172-1. Purpose.

The Town Board of the Town of Eden adopts this Chapter to accommodate the use of solar energy systems and to regulate the placement of solar energy systems so that the public health, safety, natural resources, and aesthetics of the town and its residents will not be jeopardized.

172-2. Findings.

A) The Town Board of the Town of Eden finds and declares that solar energy is an abundant, renewable and nonpolluting energy resource of the Town and that its conversion to electricity will reduce our dependence on nonrenewable energy sources. Therefore, The Town of Eden intends to accommodate the use of solar energy systems.

~~B) Solar energy systems that convert solar energy to electricity are currently available on a commercial basis from many manufacturers.~~

~~C) The generation of electricity from properly sited solar energy systems can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from solar energy systems to utilities or other users.~~

D) However, Regulation of the siting, installation and use of solar energy systems is necessary for the purpose of protecting the health and safety of neighboring property owners and the general public, and the aesthetics of the community. These regulations are in place to balance the need to improve energy sustainability through increased use of solar energy while preserving the public health, welfare, and safety, as well as environmental quality, visual and aesthetic values, and existing neighborhood's social and ecological stability. Further, the intent is to minimize any adverse impacts on the character of the neighborhoods, property values, scenic, traffic safety, historic and environmental resources of the Town.

E) Solar energy systems need to be regulated for removal when they are no longer utilized or are out of compliance with the requirements of this Chapter.

172-3. Definitions.

The following definitions shall apply to this Chapter:

APPLICANT – The person or entity filing an application and seeking an approval under this Chapter; the owner or operator of a solar energy system or a proposed solar energy system; or any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term “applicant” or “owner” or “operator” are used in this Chapter, it shall include any person acting as an applicant, owner or operator.

SOLAR ENERGY SYSTEM - Solar energy producing structures, equipment or devices used for the production of heat, light, cooling, electricity or other forms of energy, and which may be attached to or separate from the principal structure on a lot. For the purposes of this Chapter, a solar energy system does not include any solar energy system of four square feet in size or less.

BUILDING-MOUNTED SOLAR ENERGY SYSTEMS – A solar energy system that is affixed to the side(s) of a building or other structure either directly or by means of support structures or

other mounting devices, but not including those mounted to the roof or top surface of a building.

GROUND-MOUNTED SOLAR ENERGY SYSTEM – A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices. Said system is an accessory structure.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM – Any solar energy system that is affixed to the roof of a building and is wholly contained within the limits of the roof surface, including roofing materials such as shingles and tiles.

UTILITY-SCALE SOLAR ENERGY SYSTEM – Any solar energy system that is capable of producing greater than 12kw of electricity per hour.

172.4. Use Districts Where Allowed.

Subject to the provisions of this Chapter, solar energy systems shall be allowed as follows:

- A. All solar energy systems capable of producing 12kw of electricity per hour or less are permitted in all zoning districts in the Town.
- B. Utility-scale solar energy systems are only permitted in an Agricultural District (AG), Agricultural Residential (AR), Planned Industrial (PI) and Suburban Residential (SR) Use Districts, provided, however, that no utility-scale solar energy system is permitted on any property in the MS4, Floodplain, SR* or Conservation overlay areas.
- C. Any inconsistent provisions of the Zoning Law which purport to or may be interpreted to allow solar energy systems in other districts are hereby superseded.

172-5. General regulations. The placement, construction, and major modification of all solar energy systems within the Town of Eden shall be permitted only as follows:

- A. All proposed solar energy systems are required to follow at least the minimum standards set forth by the New York State Building Codes and all specifications for such systems must be accompanied by a set of drawings stamped by a NYS certified Engineer or Registered Architect and code review checklist.
- B. All^[RBE1] solar energy systems capable of producing 12kw per hour of electricity or less require a permit upon issuance of building permit, on applications materials supplied by from the Town of Eden Building Department.
- C. Utility-scale solar energy systems shall be permitted only by Special Permit^[RBE2] by the Town of Eden Town Board in use districts where allowed, in accordance with the criteria established in this Chapter, after compliance with SEQRA-, upon concurrent site plan approval issued by the Town of Eden Planning Board, ^[RBE3]and upon issuance of a building permit by the Town of Eden Building Department, and shall be subject to all provisions of this Chapter.
- D. All solar energy systems existing on the effective date of this Article shall be allowed to continue usage as they presently exist. Routine maintenance shall be permitted on such existing systems. New construction other than routine maintenance shall comply with the requirements of this Chapter.
- E. No solar energy system shall hereafter be used, erected, moved, reconstructed, changed or

altered except in conformity with this Chapter.

- F. Any applications (including variance applications) pending for solar energy systems on the effective date of this Chapter shall be subject to the provisions of this Chapter.
- G. This Chapter shall take precedence over any inconsistent provisions of the Town of Eden Code^[RBE4].

172-6. General Criteria.

- A. All solar energy systems shall comply with all applicable federal, state, county and Town of Eden laws, regulations and building, plumbing, electrical and fire codes. In addition, all solar energy systems shall be labeled with a permanent sign indicating their location on-site, as directed by the Code Enforcement Officer^[RBE5].
- B. Building-mounted solar energy systems shall not be more than two^[RBE6] (2) feet from the building wall and shall not be permitted on any building facade facing a street^[RBE7].
- C. Ground-mounted solar energy systems capable of producing 12kw of electricity per hour or less shall be subject to the following requirements^[RBE8]:
 - (1) They shall be located only in a side or rear yard, and if located in side yard shall not be closer to the street than the primary building on the lot.
 - (2) They shall be placed no closer than two (2) times the standard setback requirements for an accessory structure of the zoning district in which they are located; and
 - (3) The height of said solar energy system shall not exceed twelve (12) feet when oriented at maximum tilt.
 - (4) The total surface area of said solar energy system on a lot shall not exceed that allowed for accessory structures or combinations of accessory structures where permitted.(See section 172-8 for criteria for utility-scale ground-mounted systems.)
- D. Solar^[RBE9] storage batteries. When solar storage batteries are included as part of any solar energy system, they shall be placed in secure container or enclosure meeting the requirements of the New York State building and fire codes.
- E. Approval for placement and use of any solar energy system under this Chapter is not a guarantee of solar skyspace access. If a solar energy operator needs or desires solar skyspace access across the property of another it may negotiate for an easement or other written agreement containing such terms as the parties may mutually agree. The provisions of the Chapter do not require any property owner to relinquish solar skyspace access to benefit a solar energy system, however.
- F. All solar collectors and structures and devices used to support solar collectors shall be non-reflective and painted a subtle or earth-tone color.
- G. The design, construction, operation and maintenance of any solar energy system shall demonstrably prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public parks.

- H. The development and operation of any solar energy system shall not have a significant adverse impact on fish, wildlife or plant species or their critical habitats, or other significant habitats identified by the Town of Eden or federal or state regulatory agencies.
- I. Artificial lighting of any solar energy system shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads and public parks.
- J. If the use of any approved solar energy system is discontinued, the owner or operator shall[RBE10] notify the Code Enforcement Officer within thirty (30) days of such discontinuance. If a solar energy system is to be retained and reused, the owner or operator shall further inform the Code Enforcement Officer of this in writing at such time and obtain any necessary approvals within one year, otherwise it shall be automatically deemed abandoned.
- K. Any solar energy system to be used strictly for Agricultural use purposes in accordance with NYS Agriculture and Markets Law may have some of the requirements of this article waived by the Building Inspector or Town Board. [RBE11]

172-7. Utility-Scale Solar Energy Systems/Applications.

A special permit is required to place, construct or make a major modification to a utility-scale solar energy system within the Town. The applicant shall submit twelve (12) sets of the following[RBE12] information to the Code Enforcement Officer, who shall first present it to a professional engineer or consultant for an initial review and then present it to the Planning Board for its review and recommendation to the Town Board. The Planning Board may make such additional referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. The following information shall be contained in the application:

- A. A completed State Environmental Quality Review Act (SEQRA), environmental assessment form (EAF), with the Town of Eden Planning Board designated as lead agency for the SEQRA process.
- B. Necessary permit information:
 - (1) Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and written permission signed by the property owner authorizing the applicant to represent the property owner; and
 - (2) Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc; and
 - (3) Documentation of the clearing, grading, storm water and erosion control plans; and
 - (4) Utility interconnection data and a copy of written notification to the utility of the proposed interconnection; and

- (5) One or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices.
- C. A site plan in accordance with the Town of Eden's site plan requirements, and in sufficient detail as follows:
- (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the entire solar energy system, with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site; and
 - (2) Property lot lines and the location and dimensions of all existing structures and uses on site within five hundred (500) feet of the solar panels; and
 - (3) Proposed fencing and/or screening for said project, and
 - (4) Clearing, grading, storm water and erosion control[RBE13].
 - (5) Before the Town of Eden shall issue a clearing, grading, storm water or building permit for a utility-scale solar energy system, the applicant shall submit a storm water and erosion control plan to the Town's professional engineer or consultant for its review and approval, and the plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands, and shall minimize erosion or sedimentation.
 - (6) Any such additional information as may be required by the Town's professional engineer or consultant, Town Board, Planning Board, Town Attorney or Code Enforcement[RBE14] Officer[RBE15].

172-8. Special Permit Criteria for Utility-Scale Solar Energy Systems.

Special permits issued for utility-scale solar energy systems shall meet the following criteria:

- A. Any utility-scale solar energy system shall be placed a minimum two hundred feet [RBE16] from all adjacent property lot lines. Such setbacks from property lines will not apply if the application is accompanied by a legally enforceable written agreement that runs with the property for a period of twenty-five (25) years or the life of the special permit, whichever is longer, stating that the adjacent landowner(s) agrees to the elimination or reduction of the required setbacks. The setback requirements in this section can only be varied by agreement process with adjoining ~~the~~ landowner(s), and not by a variance from the Zoning Board of Appeals. Any agreement to reduce property line setbacks shall not constitute the reduction or elimination of required setbacks from structures; setbacks from structures, for safety reasons, shall not be reduced or eliminated.
- B. The maximum height of a utility-scale solar energy system shall not exceed twenty (20)

feet[RBE17] when oriented at maximum tilt.

- C. All transmission lines and wiring associated with a utility-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code[RBE18] and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
- D. Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.
- E. A berm, landscape screen or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site, may be required along any property line that abuts an existing residence or public park.
- F. After completion of a utility-scale solar energy system, the applicant shall provide written post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the plans approved by the Town of Eden Planning Board and or Town Board.
- G. A bond or other appropriate form of security shall be required to cover one and a half times the cost of the removal and site restoration as determined by the Town's professional engineer or consultant, and proof of such bond or security shall be filed prior to construction and on an annual basis with the Town Clerk.
- H. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county and local regulatory agencies having jurisdiction over utility-scale solar energy systems.
- I. The special permit may be granted or denied, or granted with stated written conditions. Denial of a special permit shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a special permit, the applicant shall seek a building permit for the utility-scale solar energy system.

172-9. Completion; Inspections; Continued Operation; Removal; Determination of Abandonment; Fees; Alterations; Transferability.

- A. Time limit for completion of utility-scale solar energy systems. After the granting of a special permit of a utility-scale solar energy system with site plan approval, a building permit shall be obtained within six months. The project shall be completed within twelve months thereafter. If not then constructed, the special permit shall automatically expire.
- B. Inspections. Upon reasonable notice, the Code Enforcement Officer or his or her designee may inspect any solar energy system for the purpose of compliance with this Chapter. Twenty-four (24) hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a utility-scale solar energy system shall be inspected annually by a New York State licensed

professional engineer that has been approved by the Town or at any other time, upon a determination by the Code Enforcement Officer that damage may have occurred, or that the solar energy system is not in compliance with the requirements of this Chapter. A copy of the inspection report shall be submitted to the Code Enforcement Officer. Fees or expenses associated with this inspection shall be borne entirely by the permit holder.

- C. Continued Operation. All solar energy systems shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Code Enforcement Officer shall have the right to require annual documentation of the on-site usage and total electricity output of any solar energy system.
- D. Removal. All solar energy systems shall be dismantled and removed immediately, at the cost of the owner, when the special permit or approval has been revoked by the Town of Eden Town Board, or the solar energy system has been deemed by the Code Enforcement Officer to be inoperative or abandoned for a period of more than one hundred^[RBE19] and eighty (180) days. If the owner does not dismantle and remove the solar energy system as required, the Town may do so and shall apply the required bond to the cost, followed by a tax lien on said parcel for expenses not covered by the bond.
- E. Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the Code Enforcement Officer, who shall provide the owner with written notice by personal service or certified mail. Any appeal by the owner of the Code Enforcement Officer's determination of abandonment or inoperability shall be filed with the Town of Eden Town Board within thirty days after the Code Enforcement Officer caused personal service or the mailing by certified mail and the Board shall hold a hearing on same. Unless a court of competent jurisdiction grants a stay or reverses said determination, one hundred and eighty (180) days after the date of determination of abandonment or inoperability without reactivation, any approvals for the solar energy system shall automatically expire.
- F. Fees. Solar energy systems shall pay all applicable fees set forth in the Town's Schedule of Fees, including an application fee, special permit fee, building permit fee and annual inspection fee.
- G. Alterations. Any changes or alterations post-construction to a utility-scale solar energy system shall be done only after amendment of the special permit and/or site plan (if required) and/or the building permit, and subject to all requirements of this Chapter.
- H. Transferability. Special permits for utility-scale solar energy systems shall be assignable or transferrable so long as they are in full compliance with this Chapter, and the Code Enforcement Officer is notified in writing at least fifteen (15) days prior thereto.

172-10. Revocation.

If the applicant violates any of the conditions of its special permit or site plan approval or building permit, or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit, site plan approval or building permit. Revocation may occur after the applicant is notified in writing of the violations.

172-11. Interpretation; conflict with other law; severability

In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern. If any portion of this Chapter is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

This Local Law shall take effect immediately upon filing with the Secretary of State of New York.

CodeCttee SolarCodeDraft Mar 1 2017.doc

Solar Code

Town	Moratorium	Length	Date	Type
Orchard Park	Y	6 months	Jul-16	All
Lancaster	Y	6 months	Mar-17	Commercial - > 1/4 acre
North Collins	Y	6 months	Jun-16	All
Elma	Y	6 months	Nov-16	All
Evans	Y	6 months	Nov-16	non-residential

Town	Building-Mounted		Ground-Mounted		Rooftop-
	Zones	Size	Zones	Size	Zones
Aurora	All Zones	<=25kw	All Zones w/Restrictions	<25kw	All Zones
Eden	All Zones	<=12kw	All Zones	<=12kw	All Zones
Lockport	All Zones		All zones Res if lot >2 acres		All Zones
Grand Island	All Zones		All Zones		All Zones

Mounted	Utility-Scale	
Size	Zones	Size
<25kw	Business 1 (B1) Business 2 (B2) Industrial (I)	any - for offsite sale and consumption
<=12kw	Agricultural (AG) Agricultural Residential (AR) Planned Industrial (PI) Suburban Residential (SR)	>12KW
	Agricultural (AG) Agricultural Residential (AR) Lots>15 acres	
	Varies with lot size	Major - one or more freestanding systems; 80% lot coverage allowed